

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re E.R., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.R.,

Defendant and Appellant.

F077162

(Super. Ct. No. 514216)

**OPINION**

**THE COURT\***

APPEAL from orders of the Superior Court of Stanislaus County. Ruben A. Villalobos, Judge.

Karriem Baker, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Clara M. Levers, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

\* Before Levy, Acting P.J., Detjen, J. and Franson, J.

Minor E.R. contends on appeal that the juvenile court abused its discretion when it committed him to the Department of Juvenile Justice (DJJ) because there was insufficient evidence the commitment would benefit him. We affirm.

### **BACKGROUND**

On April 16, 2016, 13-year-old minor and four other male juveniles were seen walking toward the victim's house. A witness saw one of the juveniles standing across the street from the house and another at the front door of the house. Someone inside opened the front door and let the juvenile in and shut the door. The remaining juveniles also entered through the door, then shut it. Shortly thereafter, the juveniles, one carrying a silver laptop computer, ran from the house and jumped a fence into the nearby school grounds.

A police officer responded and spoke to the witness near the school. As they talked, the officer observed five male juveniles who matched the witness's description, walking out of the school toward the parking lot. The officer detained the juveniles and the witness identified them. A laptop, three bottles of cologne, and a light were found on the roof of the school. The victim identified the items.

On May 18, 2016, a juvenile wardship petition was filed pursuant to Welfare and Institutions Code section 602,<sup>1</sup> alleging minor had committed first degree burglary (Pen. Code, § 459, a felony). Minor failed to appear for his arraignment and a bench warrant was issued for his arrest. He was arrested on August 22, 2016.

On August 24, 2016, minor admitted the petition's burglary allegation. The juvenile court declared minor a ward of the court and placed him on probation, with 30 days in juvenile hall, 29 of those days to be served on electronic monitoring.

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

On October 29, 2016, a police officer responded to a report of the odor of marijuana. The officer observed a storage unit's garage door cracked open, and he could smell marijuana coming from the unit. The officer knocked and contacted three subjects inside the unit, including minor, who identified himself with a false name. The unit contained 2.27 pounds of hanging marijuana, 58.77 grams of marijuana in a jar, and 62.69 grams of marijuana in a shoe box. The officer transported minor to his home and learned his true name from his grandmother.

On November 1, 2016, a second juvenile wardship petition was filed pursuant to section 602, alleging minor had possessed marijuana for sale (Health & Saf. Code, § 11359; count 1, a felony), cultivated marijuana (Health & Saf. Code, § 11358; count 2, a felony), and provided false identification to a peace officer (Pen. Code, § 148.9, subd. (a); count 3, a misdemeanor).

On November 28, 2016, minor admitted count 3, and the remaining allegations were dismissed. The juvenile court continued minor as a ward of the court, continued his probation, and ordered that he serve 60 days in juvenile hall.

On January 6, 2017, minor and two other males attacked three male victims who were sitting in a parked vehicle. Minor hit one victim in the face with the butt of a shotgun. The males pulled the victims out of the vehicle, punched and kicked them, and ordered them to empty their pockets or get shot. Eventually, the victims were able to run away, and the males took the victims' vehicle.

On January 10, 2017, during a probation search of minor's residence, officers found two pairs of red and white shoes and one black and red football jersey.

On January 25, 2017, probation learned minor had 13 unexcused absences from school.

On January 30, 2017, during a probation search of minor's residence, officers found a small bag containing 6.6 grams of marijuana.

On January 31, 2017, a violation of probation notice (§ 777) was filed, alleging minor failed to attend school, possessed clothing with gang-affiliated colors, and knowingly used or possessed a controlled substance. Minor admitted the allegations. The juvenile court continued probation and ordered that minor serve 60 days in juvenile hall, 30 of those days to be served on electronic monitoring.

On April 3, 2017, a third juvenile wardship petition was filed pursuant to section 602, alleging minor had committed carjacking (Pen. Code, § 215, subd. (a); count 1, a felony) and two counts of robbery (Pen. Code, § 211; counts 2 & 3, felonies). It was further alleged that minor was armed with a shotgun during the commission of those offenses (Pen. Code, § 12022, subd. (a)(1)).

At the dispositional hearing on May 8 and 9, 2017, the juvenile court found count 1 true and count 3 not true, and agreed to dismiss count 2. Minor's counsel argued that juvenile hall would be more appropriate than DJJ:

“[Minor] hasn't actually done a long stint of time in [juvenile] hall. I think the most he's actually done is 60 days. So I think DJJ is a little extreme. I believe that we can still make an effort to help him before we get to that level.”

On August 30, 2017, the juvenile court told minor it was equivocating between committing him to juvenile hall or DJJ:

“[Minor], I've been thinking long and hard on this one. To summarize, probation had a very appropriate recommendation that you be sent to the [DJJ]. The reason for that recommendation was based on the circumstances of this case, as well as your social history; in other words, circumstances that are relevant to you and your life.

“Your attorney argued the DJJ would not be appropriate in this case. And one of her concerns was that someone who was more involved in this case didn't go to DJJ, and so the thought would be that it would be unfair to send this minor, therefore, to DJJ.

“I've gone back and forth on these arguments. I've thought about it. I've thought about your statement that you presented to the Court. I've

thought about the argument and the information that your lawyer presented, and I decided that at this point I am not going to be sentencing you to DJJ.

“So because of that, what we’re going to have to do is put the matter over to next week so that probation can prepare some terms so that I can place you on probation. And that would include a period of incarceration, obviously, in juvenile hall, which is where you are right now and other terms potentially. [¶] ... [¶]

“[Minor], I want you to think about—I think you’ve done a lot of thinking about this. But if, in the future, this kind of thing happens, you know, at the very least you’d be looking at DJJ. There’s so many other opportunities that are far worse than that for this type of behavior, including state prison. So I hope you do some more thinking on this.”

On September 6, 2017, the court committed minor to 365 days in juvenile hall, stating the following:

“Okay. [Minor], this was kind of a close call for me. And I didn’t send you to DJJ because I feel that you’re starting to understand what’s going on in your life and the consequences of your choices.

“I really hope that you have figured it out, because if not, if you continue down this path, you only have one or two futures. One is that you hurt someone or kill someone and you go away for a very, very long time. Or two is you, yourself, get hurt or you, yourself, get killed. And I don’t want any one of those for you.

“So I hope that you use this time that you have left in juvenile hall to think about that and to appreciate that your life would have been very different if I sent you [to] DJJ. I hope you’re ready to start making better choices.”

A few weeks later, on September 23, 2017, while in juvenile hall, minor and his brother assaulted a juvenile victim because he was “running his mouth” and disrespecting minor. The victim received a laceration that required stitches.

On October 10, 2017, a second violation of probation notice (§ 777) was filed, alleging minor had failed to obey all laws by attacking another minor in juvenile hall. Minor admitted the allegation.

On November 15, 2017, the probation officer filed a dispositional social study and recommended a DJJ commitment. The officer noted that minor, now 15 years old, was displaying escalating criminality and failed to appreciate the gravity of his behavior. The officer explained minor's lack of respect for law and authority, his repeated failures in placements, and the prospects for his treatment:

“The minor does not understand the seriousness of his actions and does not accept any consequences for his involvement in his delinquent behavior. The minor has shown no remorse for his actions and refuses to take any responsibility for the role he played in the crime. The minor does not appear to be interested in making positive decisions or, at the very least, decisions that would keep him out of custody. The minor needs a secure setting where he can remain drug and alcohol free; participate in counseling and behavioral health services that can help him with rehabilitation. He is in need of attending school and earning credits towards his high school diploma, and later receive job-training to help him become a working and productive member of society when he is an adult.

“The minor appears to have significant problems in multiple areas, including negative peer influence, school adjustment, school performance, truancy, a lack of respect for laws, a lack of respect for the property of others, a lack of respect for the safety of others, a lack of respect for his mother, and a lack of respect for authority. It is further proof the minor does not understand the seriousness of his actions, as he shows no remorse for his involvement in the offense or any prior offense. The minor poses a risk to the community and overall, it is clear the minor is unfit to return to the community at this time. [¶] ... The minor's petitions have become increasingly serious and violent in nature and the undersigned believes he is in need of intensive services that will help him once he is out of custody.

“The undersigned is recommending the minor be committed to the [DJJ], as he has failed to abide by the orders of the Court or make himself available for services and probation supervision. Additionally, the undersigned feels the minor's impulsivity, disregard for public safety, lack of maturity, and violent behavior make[] him an imminent threat to the safety of the community. A commitment to the [DJJ] will allow the minor to reflect on his actions, participate in counseling, including individual and family, behavioral counseling specialized for the minor's specific needs, participate in drug treatment, enhanced gang awareness classes, concentrate

on his rehabilitation and continue to earn credits towards his high school diploma.

“While in custody at the [DJJ], the minor will receive a number of services including but not limited to: job training (i.e. resume building, hands-on training), enhanced gang awareness classes, behavioral counseling specialized for the minor’s specific needs, and career technical education, should the minor want to further his education after high school. The minor has failed to reform and at this time, it is believed that a commitment to the [DJJ] is necessary for the protection of the community. It appears the community will be best protected if the minor is in a locked facility where he can receive gang awareness, education and substance abuse counseling. It is hoped the minor will receive the services he needs to assist him in being successful in society.”

At the dispositional hearing on January 29, 2018, the prosecutor argued for a DJJ commitment, while minor’s counsel continued to argue that additional time in juvenile hall would be appropriate. The juvenile court decided on a DJJ commitment, stating:

“All right. Before I proceed and impose the disposition, [minor], I want to let you know that you were before the Court on September 6th. And on that date, the Court considered sending you to [DJJ]. And then the incident that led to the violation of probation in this case was September 23rd[,] 2017, so not long after that. That’s a problem. That’s a real big problem .... [¶] ... [¶]

“And then within a couple of weeks after that, a little bit more than a couple weeks, you found yourself engaging in the behavior that led you here today. The Court finds that troubling. [¶] ... [¶]

“I’m going to tell you right now, [minor], and I’ll just let you know, I’m going to be committing you to DJJ. That is going to be my ruling. There’s some language that I have to say. The reason I’m committing you to DJJ is because I’m considering all of the circumstances. I’m considering what’s happened in your case up to now, including the good work you’ve done and including the trouble that you’ve gotten yourself into. I’ve also considered the social factors that have been mentioned by counsel and probation and that are listed in the report. [¶] ... [¶]

“Court also finds that it has considered all reasonable alternatives, specifically I’ve considered counsel’s arguments, as well as probation’s arguments, as it related to a potential placement order by the Court. And the Court specifically finds that given the factors mentioned by probation

and the People, that [alternative] placement would not be appropriate at this point.”

The juvenile court committed minor to DJJ for a maximum confinement of 138 months, with credit for 391 days of presentence custody.

On March 14, 2018, minor filed a notice of appeal.

### **DISCUSSION**

We review an order committing a minor to the DJJ for abuse of discretion. (*In re Carl N.* (2008) 160 Cal.App.4th 423, 431–432; *In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) In doing so, we will affirm if there was substantial evidence to support the juvenile court’s findings, indulging all reasonable inferences in support of its decision. (*In re Calvin S.* (2016) 5 Cal.App.5th 522, 527–528.) “ ‘ ‘ ‘In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law.’ ” ’ [Citation.] ‘A [juvenile] court abuses its discretion when the factual findings critical to its decision find no support in the evidence.’ ” (*In re Khalid B.* (2015) 233 Cal.App.4th 1285, 1288.)

“The purpose of juvenile delinquency laws is twofold: (1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and the community,’ and (2) to ‘provide for the protection and safety of the public ....’ (§ 202, subds. (a), (b) & (d); [citations].)” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614.) “In determining the judgment and order to be made in any case in which the minor is found to be a person described in Section 602, the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.) The court is required to “consider ‘the



broadest range of information’ in determining how best to rehabilitate a minor and afford him adequate care.” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329.)

A DJJ commitment is not an abuse of discretion where the record demonstrates “both a probable benefit to the minor ... and the inappropriateness or ineffectiveness of less restrictive alternatives.” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.)

Although juvenile law contemplates a progressively more restrictive placement scheme, beginning with home placement under supervision and culminating in commitment to DJJ, the court may consider commitment without prior recourse to other less restrictive placements. (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1159.) The court is not required to expressly state on the record its reasons for rejecting less restrictive placements, but the record must contain some evidence that the court appropriately considered and rejected reasonable alternative placements. (*Ibid.*)

Minor relies on *In re Carlos J.* (2018) 22 Cal.App.5th 1 (*Carlos J.*) to argue that the probation officer’s dispositional report in this case used “vague and broad language,” rather than specific facts and “actual information” describing the services that would benefit minor. Minor contends this was a failure to present adequate evidence of the specific nature of the programs or services to assist him in addressing his escalating criminal activity or otherwise benefit him.

In *Carlos J.*, the probation officer recommended commitment to DJJ based on the underlying offense and the minor’s gang association. (*Carlos J., supra*, 22 Cal.App.5th at p. 7.) “In rejecting a less restrictive placement, the probation officer opined that, ‘Programming available at the local level is insufficient to meet the minor’s treatment, educational, and social needs.’ ” (*Id.* at p. 8.) The probation officer further stated the minor “ ‘must be contained in a state facility where his educational, therapeutic, and emotional issues can be addressed in a secured facility. After serving his term and receiving gang intervention services and other appropriate resources, he will return to the community ....’ ” (*Id.* at pp. 8–9.) The juvenile court committed the minor to DJJ,

concluding “ ‘the youth will benefit from the reformatory, discipline or other treatment provided by the [DJJ].’ ” (*Id.* at p. 9.)

The Court of Appeal reversed, noting “there must be *some* specific evidence in the record of the programs at the [DJJ] expected to benefit a minor.” (*Carlos J., supra*, 22 Cal.App.5th at p. 10.) The court held, “the law required the juvenile court, not the probation department, to make the finding of probable benefit. The court could not make that finding, and this court cannot review the adequacy of the evidence supporting the finding, without evidence in the record of the programs at the [DJJ] expected to be of benefit to appellant. The probation officer’s unexplained and unsupported assertion of possible benefit is not evidence of ‘reasonable, credible, and of solid value’ from which the juvenile court could make an informed assessment of the likelihood a [DJJ] placement would be of benefit to appellant, in light of his specific needs.” (*Ibid.*) The court noted the juvenile court “had no information before it regarding any mental health services at the [DJJ].” (*Id.* at p. 11.) Likewise, “the report contain[ed] no information about the nature of the gang intervention services, in order to allow the juvenile court (and this court on review) to make an assessment of the appropriateness and adequacy of the programs for appellant.” (*Ibid.*)

Here, by contrast, the record does contain evidence regarding relevant programs at DJJ. The dispositional report described the DJJ programs as including individual, family, and behavioral counseling specialized for minor’s specific needs, implying that those needs would be assessed; school to earn credits toward his high school diploma; job training, including resume building, hands-on training, and career technical education; enhanced gang awareness classes; and substance abuse treatment. Furthermore, minor already had a considerable history with the juvenile system and less restrictive placements had failed. His criminal behavior was escalating rapidly and he showed flagrant disrespect for authority. We are satisfied this constituted substantial evidence to support the juvenile court’s determination of probable benefit from a DJJ placement.

**DISPOSITION**

The juvenile court's findings and orders are affirmed.